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No. 83-374

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

JONATHON EARL LOGAN, APPELLANT

v.

THE SUPREME COURT OF THE STATE OF IOWA,
W.W. REYNOLDSON, in his capacity as
CHIEF JUSTICE OF THE SUPREME COURT OF IOWA,
THE BOARD OF LAW EXAMINERS,
MAURICE B. NIELAND, as chairman of the
IOWA BOARD OF LAW EXAMINERS, APPELLEES

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF IOWA

APPELLANTS' OPPOSITION TO APPELLEES' MOTION TO DISMISS

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The Appellant hereby files the following opposition to Appellees' Motion to Dismiss.

ARGUMENT

I. A Substantial Federal Question is Raised By Appellant's Claim that Iowa Court Rule as Applied Violates Due Process Guarentees.

A. Appellant Has Standing to Assert Entitlement to a "Grandfather" Provision.

Appellees assert a "grandfather" provision should not be applied to Appellant because he did not rely upon Iowa Court Rule 106 in making his educational or professional plans. (Appellees' Motion to Dismiss, pp 5-7), and that assertion of a right to be grandfathered in is an effort to force the Iowa Supreme Court to depart from its established policy. As is stated in Louis v. Supreme Court of Nevada, 490 F.Supp. 1174, 1180 (1980):

> "One who attends an unaccredited law school knowing it may preclude her admission to practice in the state of her choice cannot complain when she is excluded from practice for that reason."

What Appellant knew was that Western State graduates were being admitted to practice in Iowa during the time he attended law school. He therefore expected to be admitted, by virtue of this established policy, to the bar examination to carry out his professional

plans, and had no reservations about moving to Iowa when his wife secured employment in Sioux City. Appellants' education comported with Iowa's established policy of admitting Western State graduates to its bar, and until June, 1983, no published amendment to Rule 106 existed which would lead him to believe otherwise. Appellant reviewed the published Court Rules regarding admission to the bar of Iowa to insure no changes had occurred since past Western State graduates were admitted. Appellees can cite no authority which requires a law student to register in every state where he is entitled to sit for the bar exam. No Western State graduate was denied admission because of failure to register as a law student and such registration was not required to be submitted with Appellant's application for the January 1984 exam. The argument that Appellant must have attended law school with an intent to practice in Iowa before a "grandfather" provision will permit entrance is not base on any precedent. The states of Louisiana, (Moity v. La. State Bar Assoc. 414 F.Supp. 176), Tennes-

see, (Petition of Stayton, 537 S.W. 2d 703), Nevada, (Louis, supra), Montana, (Amendments to Bar Admission, 609 P.2d 263), and Indiana, (Buxton v. Lovell, 559 F.Supp. 979), have published grandfather provisions where the requirements for attaining a professional license have been changed by publication. Iowa Court Rule 106 read the same when Appellant applied as when past Western State graduates were admitted.

B. The Rule is Unduly Vague

Appellees place reliance on the Iowa Supreme Courts' unpublished order of Foytack-Kelly in denying further waivers (Motion to Dismiss, p. 9) and state Appellant should have inquired regarding the policy. On March 10, 1983, the Assistant Supreme Court clerk, John Bruntz, accepted Appellant's application stating, "here should be no problem since your school is accredited by many other agencies." No mention was made of the Foytack-Kelly order. The Iowa Board of Law Examiners cited Court Rule 106 as authority for its denial of Appellants' entrance, not the Foytack-Kelly order.

On May 2, 1983, the Executive Assistant to the Chief Justice of the Iowa Supreme Court, Paul Wieck III, inquired of the Supreme Court clerk, Keith Richardson, in the presence of Appellant's attorney, Gary Robinson, as to the Court's policy of admission and again, the Foytack-Kelly order was not mentioned.

In the Iowa Supreme Courts' order of denial dated May 17, 1983, the court relied on Rule 106 with no mention of the policy regarding non-ABA law school graduates.

For the first time, in Appellees' Motion to Dismiss, the unpublished order is brought to light and used as authority to thwart the efforts of Appellant to sit for the Iowa bar examination. There can be no doubt that such bad faith failure of the Iowa Board of Law Examiners, the Iowa Supreme Court, and the Supreme Court Clerk to advise Appellant of the unpublished "policy," or to amend Rule 106 to reflect that policy, resulted in Appellant expending a great amount of time, money, and effort in his attempt to sit for

the Iowa bar. The fact that neither Appellant, his attorney at the State level, or his attorney in the Federal forum were advised of the Foytack Kelly order indicates insufficient notice of the change in policy of approval of waivers. An applicant for admission to the Iowa bar would become aware only of bar admission requirements as published, not any unpublished policy to the contrary. The fact that Iowa retained statutory descretion to find a law school "reputable" notwithstanding an unpublished order is more reason to find their action against Appellant in violation of Federal Constitutional Due Process mandates.

C. Appellant was Denied Due Process of Notice and Opportunity to be Heard on Disputed Facts at the State Supreme Court level.

Appellees would have this Court believe the only fact in dispute is whether or not Appellant graduated from an ABA law school. The fact in dispute is whether the Iowa Supreme Court violated Due Process mandates of the Federal Constitution in its application of

Rule 106 and giving no notice or hearing regarding that decision. The Federal Court in Pennsylvania stated:

> "Waivers of the ABA accreditation requirement...may not be granted or denied arbitrarily or capriciously, or without definable reasons or standards, but must be granted in accordance with due process guarantees." Murphy v. Egan, 498 F.Supp. 240 (1980).

In In Re Costello, 401 A.2d 447, the Rhode Island Supreme Court overturned the Board of Law Examiners decision to deny an applicant admission to the bar exam where the denial was issued without assessing the merits of a waiver of the ABA requirement. The orders issued by the Iowa Board and Supreme Court make it clear the merits of Appellant's request were not assessed, since they do not address the issue of waiver, and a hearing should have been granted. Appellees rely on FCC v. WJR, 337 U.S. 265, stating at page 12 of the Motion to Dismiss,

> "Due process does not require that a state supreme court grant oral hearings to every disappointed applicant who seeks to change established requirements for admission to the bar."

Appellees reliance is misplaced as Appellant is not trying to change established requirements for admission. He is applying for admission under the same rule as worded when past Western State graduates were admitted. Appellees give no legal authority to show that bar applicants have any less claim to due process guarantees than do other citizens.

> "Applicants for admission to the bar by way of the waiver procedure are entitled to know the criteria which must be met in order to be granted a waiver," Murphy at 244.

Appellant applied to the Iowa bar by way of a waiver and neither the Board or the Iowa Supreme Court advised him of any prior determinations on which they relied in making their determination of Appellants' unfitness.

> "The touchstone of due process is protection of the individual against arbitrary action of the government," Black v. Sullivan, 561 F.Supp. 1050, 1061 (1983).

Appellees reliance on Dent v. West Virginia 129 U.S. 114 is misplaced since Dent refers to a published changed statute, and Court Rule

106 read identically when Appellant applied as when past Western State graduates were admitted.

II. The Equal Protection Challenge of Appellant is Substantial.

Again, Appellees reliance on Dent, supra is incorrect as Dent addresses published alterations to admission. Court Rule 106 as published when Appellant applied permitted discretionary granting of waivers by the Iowa Supreme Court and it was their practice to do so. To deny Appellant entrance is to deny him Equal Protection guarantees. (Refer to Appellants' Suplement to Jurisdictional Statement.)

III. Appellants Right to Travel is Restricted.

Appellees state the decision by the Court of Iowa has no effect on where he lives in that all Iowa attorneys are ABA school graduates. This has no basis in fact as graduates from Cuban law schools have been permitted entrance as well as those mentioned in Appellants'

Jurisdictional Statement. Appellees state the Supreme Courts' policy is non-discriminatory, yet despite numerous occaisions giving rise to a duty to disclose, Appellant was never advised of the Foytack-Kelly order. Such action clearly presents questions of Equal Protection violations.

IV The Anti-Trust Question is Substantial.

Appellees rely on Bates v. Arizona, 433 U.S. 350, to show a clear articulation of state policy removes them from anti-trust provisions. However, no clear and affirmitive articulation of state policy was presented until Rule 106 was amended. (Refer to Supplement to Jurisdictional)

CONCLUSION

A claim of right to admission to the Iowa bar has been denied by judicial order. Federal questions are raised and the appeal is a proper Article III controversy.

Respectfully submitted.

By 
Gary A. Robinson, Attorney
for Appellant Jonathon E.
Logan

PROOF OF SERVICE

I, Gary A. Robinson, counsel of record for Jonathon Earl Logan, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 29th day of September, 1983, I served three copies of the Appellants' Opposition to Appellees' Motion to Dismiss on each of the parties thereto as follows:

1. On the Supreme Court of the State of Iowa, W.W. Reynoldson, Chief Justice by mailing three copies to K.R. Richardson Clerk of the Supreme Court, Iowa State Capitol Building, Des Moines IA.

2. On the Iowa Board of Law Examiners by mailing three copies to Maurice B. Nieland, 300 Toy National Bank Building, Sioux City, IA 51101.

3. On the Attorney General of the State of Iowa, Brent R. Appel, Deputy, by mailing three copies to Attorney General of Iowa, Hoover State Office Building, Des Moines, IA 50319.

By 
Gary A. Robinson
Attorney for Appellant